

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 28, 2000

IN RE:)
)
APPLICATION OF MEMPHIS NETWORKX, LLC,)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
INTRASTATE TELECOMMUNICATION)
SERVICES AND JOINT PETITION OF MEMPHIS) **DOCKET NO. 99-00909**
LIGHT GAS & WATER DIVISION, A DIVISION)
OF THE CITY OF MEMPHIS, TENNESSEE)
("MLGW") AND A&L NETWORKS-TENNESSEE,)
LLC ("A&L"), FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING JOINT)
OWNERSHIP OF MEMPHIS NETWORKX, LLC.)

**ORDER VACATING ORDER DENYING MOTION TO ALLOW ADDITIONAL
DISCOVERY AND TO AMEND PROCEDURAL SCHEDULE**

This matter came before the Tennessee Regulatory Authority (the "Authority") following a regularly scheduled Authority Conference held on April 25, 2000 upon a request filed by Time Warner Communications of the Mid-South ("Time Warner") on April 24, 2000 that the Authority vacate the Pre-Hearing Officer's initial Order of April 19, 2000 denying Time Warner's Motion to Allow Additional Discovery and to Amend the Procedural Schedule. In the initial Order denying Time Warner's Motion, the Pre-Hearing Officer determined that in moving the hearing date to allow more time for the hearing, the Directors did not intend to provide a period for additional discovery in advance of the new hearing dates. Further, the Pre-Hearing Officer determined that to the extent that Time Warner desired to bring to the Authority's attention the information revealed in its Motion

and the exhibits filed in support thereof, that information could be elicited at the time of hearing from the witnesses already scheduled to testify. In its letter requesting that the decision of the Pre-Hearing Officer be vacated, Time Warner asserted that the discovery depositions would provide the Intervenors the opportunity to assimilate relevant and material evidence which has yet to be disclosed. Additionally, Time Warner asserted that the Intervenor's ability to fully present relevant proof at the hearing would be materially and substantially impaired should the requested depositions not take place.

Following extensive discussions by Time Warner and Counsel for Memphis Networx, LLC, Memphis Light Gas & Water Division and A&L Networks-Tennessee LLC ("Applicant and Joint Petitioners"), the Directors, by a two to one vote,¹ granted Time Warner's request to vacate the Order of the Pre-Hearing Officer and to proceed with discovery depositions of five (5) witnesses: Alex Lowe, Wade Stinson, Ward Huddleston, John McCullough and Larry Thompson. After counsel consulted with the witnesses, the Directors determined that the discovery depositions of Wade Stinson, Ward Huddleston, John McCullough and Larry Thompson would take place in Memphis, Tennessee on Thursday, April 27, 2000 at 8:00 AM at the Fogelman Executive Center on the campus of the University of Memphis. The parties agreed that the law offices of Farris, Mathews, Branan, Bobango & Hellen, PLC would serve as the alternate location if the depositions could not take place at the University of Memphis. The deposition of Alex Lowe was set to begin at 8:00 AM on Friday, April 28, 2000.

¹ After carefully considering the motion, the response thereto, the arguments of the parties and the record in this matter, Chairman Malone voted to affirm the Order Denying Motion to Allow Additional Discovery and to Amend the Procedural Schedule. Chairman Malone opined that sufficient opportunity for discovery was provided during the procedural phase of this matter. Further, depositions were previously set in this case and voluntarily cancelled by agreement of the parties, including the movant. In sum, the request to take discovery depositions on the eve of the hearing on the merits was untimely and clearly avoidable.

On April 20, 2000, the Pre-Hearing Officer issued subpoenas duces tecum for the Records Custodians of Memphis Light Gas & Water, Memphis Network and A&L Networks-Tennessee, L.L.C., as requested by Time Warner, to produce and make available the requisite documents at the hearing commencing at 9:00 AM on May 1, 2000. At the April 25, 2000 Conference, the Applicant and Joint Petitioners made an *ore tenus* motion to quash the subpoenas duces tecum for records custodians. The Applicant and Joint Petitioners asserted that some of the documents requested for production by Time Warner had already been produced and that the request was burdensome. Time Warner presented to the Directors copies of the subpoenas and lists of the documents to be produced pursuant to the subpoenas during this hearing. Following discussions from the parties, the Directors voted unanimously to deny the motion to quash. Further, the majority of the Directors who voted that depositions should occur determined that the records custodians should appear and produce the requested records at 8:00 AM on Thursday, April 27, 2000.²

IT IS THEREFORE ORDERED THAT:

1. Time Warner's Motion to Vacate the Order Denying the Motion to Allow Additional Discovery and to Amend the Procedural Schedule is granted;
2. The discovery depositions of Wade Stinson, Ward Huddleston, John McCullough and Larry Thompson will take place on Thursday, April 27, 2000 at 8:00 AM at the Fogelman Executive Center at the University of Memphis. The deposition of Alex Lowe will be taken on Friday, April 28, 2000 at 8:00 AM if no other time is available;

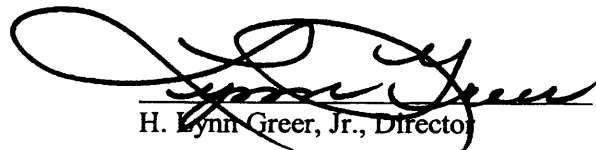
² In accordance with his vote to affirm the Order Denying Motion to Allow Additional Discovery and to Amend the Procedural Schedule, Chairman Malone voted that the records custodians should produce and make available the requisite documents at the Hearing on May 1, 2000.

3. The *ore tenus* Motion to Quash the subpoenas duces tecum of the Records Custodians of Memphis Light Gas & Water, Memphis Network and A&L Networks-Tennessee, L.L.C. made by the Applicant and Joint Petitioners is hereby denied;

4. The records custodians of Memphis Light Gas & Water, Memphis Network and A&L Networks-Tennessee, L.L.C. are required to appear and produce the requested records at 8:00 AM on Thursday, April 27, 2000; and

5. Any party aggrieved by the decision of the Tennessee Regulatory Authority in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days of the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary